

CITY OF BELMONT

PLANNING COMMISSION

ACTION MINUTES

TUESDAY, FEBRUARY 3, 2009, 7:00 PM

Chair Parsons called the meeting to order at 7:00 p.m. at One Twin Pines Lane, City Hall Council Chambers.

1. ROLL CALL

Commissioners Present: Parsons, Horton, McKenzie, Mercer, Mayer, Reed, Frautschi
Commissioners Absent: None

Staff Present: Community Development Director de Melo (CDD), Senior Planner DiDonato (SP), Associate Planner Walker (AP), Deputy City Attorney Kane (DCA), Recording Secretary Flores (RS)

2. AGENDA AMENDMENTS - None

3. COMMUNITY FORUM (Public Comments)

Warren Gibson, Belmont resident and former 5-year member of the Belmont Planning Commission, distributed copies of an article regarding his experiences that had been published in "Liberty" a national magazine. He added that he supports the proposed patio to be discussed under item 5B.

George Kranen, Belmont resident, addressed his comments to the "entire City establishment" regarding the lane striping that was recently done on Alameda de las Pulgas. He complimented Ray Davis and asked that he not cave in to the pressure from San Carlos.

4. CONSENT CALENDAR - None

5. PUBLIC HEARINGS:

5A. PUBLIC HEARING – 1906 Lyon Avenue (Continued from November 18, 2008)

To consider a Conditional Use Permit and Design Review to install a T-Mobile Wireless Telecommunications facility, consisting of six (6) panel antennas attached to the existing Mid Peninsula Water District water tank, and four detached equipment cabinets. Application Number: PA2007-0006;

APN: 044-051-140; Zoned: R-1B (Single Family Residential)

CEQA Status: Recommended Categorical Exemption per Section 15303 (e)

APPLICANT: Ben Davies on behalf of T-Mobile

OWNER: Mid Peninsula Water District

PROJECT PLANNER: Jennifer Walker, (650) 595-7453

AP Walker summarized the staff memorandum, adding the following two Conditions of Approval as requested by a Commissioner: 1) prohibiting any permanent external lighting facilities, and 2) a formal request that additional landscaping be required on the west side of the property. In general, staff believes that the information provided by the applicant indicates that each of the 16 findings and the Design Review principles can be made in the affirmative.

Commissioner Mayer questioned AP Walker about existing alternative sites. She responded that the 1999 Notre Dame pole has an existing facility but she was not certain about the other two. She added that staff was never able to determine what undeveloped site was being referred to in previous hearings. Regarding evidence that existing antennas have reduced property values in the City of Belmont, AP Walker stated that staff has no evidence proving that one way or the other.

ACA Kane responded to questions from the Commission as follows:

Commissioner Mayer:

- Was he correct in assuming that Belmont cannot deny an application of this kind for health reasons if the structure meets all of the existing limitations?
 - o Yes, Federal law specifically prohibits local governments such as Belmont from prohibiting location of wireless facilities such as this one based on environmental reasons, including environmental health factors. The reasoning behind that is that the Federal government wanted to reserve to itself the right to set national standards and therefore does not allow local and state governments to impose their own standards for assessing environmental health effects.
- Was he correct in assuming that in the case of property values, if there is no alternative site available, the Commission cannot reject an application?
 - o Yes, the Commission cannot reject an application for a reason that would have City-wide implications. In other words, if the possibility of a decrease in local property values would apply in equal force to any location, then that could not be the sole reason to deny an application of this kind.

Commissioner Reed:

- Does T-Mobile need to identify every possible site before settling on the water tank?
 - o No, it needs to justify its reasons for the water tank site and show that it has assessed reasonable alternatives as directed by the Commission, but identifying every possible site is not one of the things that is mandated by the law.

Commissioner Mercer:

- When the City has approved a cell location at one property such as this water tank, is there a different legal perspective towards denying any future additional cell locations at that same place?
 - o Each application can be assessed based on the same criteria afresh. If there is some reason that an additional co-location would trigger new problems, the Commission can evaluate those at that time and is not necessarily bound in the future by a decision made on a particular application; each application has to be assessed on its own merits.

Ben Davis, Zoning Consultant for T-Mobile, asked for and was granted time for a rebuttal at the end of the discussion. He thanked staff, neighbors and the Commission for their support and time, and introduced members of his team. He described the history and objectives of the proposed project, explained why the other site alternatives do not meet the coverage objectives and how the water tank is the only candidate that meets coverage requirements. His presentation included coverage maps and slides showing alternative sites, explaining why they were not acceptable, as well as a map showing that approximately forty-five 911 calls were made on T-Mobile phones during a 30-day period last year near the significant gap area. He stated that if the site at the water tank is in place it will better be able to handle those calls without being dropped. He presented a table showing the advantage of the proposed site over the alternative sites.

Paul Albritton, outside counsel for T-Mobile, reaffirmed that the 1996 Telecommunications Act prevents local governments from regulating wireless services based on the environmental effects of radio frequency emissions. An RF report submitted by Hammett and Edison shows that anywhere on the ground around this tank the emissions will be .48% of the federal standard, or about 200 times below the public exposure that the federal government deems as safe. He reiterated that this standard has been refined in California in a 2003 AT&T Wireless case which says that one cannot pre-empt based on the environmental effects of radio frequency emission but also any proxy of that, which means that other jurisdictions tried to say that it is not the radiation itself, it's the fear of it they were trying to regulate, or it's the reduction of property values that will result because of the emissions. That case pretty much said that proxies for radio frequency emissions are also preempted by the federal law. Regarding alternative sites and the significant coverage gap, the Act also says that local regulations shall not have the effect of prohibiting the provision of personal wireless services. He felt that the maps have shown that there is a significant gap in coverage between Alameda de las Pulgas and El Camino Real, and that they have shown that this proposal is among the sites that are the least intrusive means of filling the coverage gap. He added that the Act also says that the Commission's decision has to be based on substantial evidence, and that there needs to be substantial evidence for denial of the site. They have not seen any evidence for denial.

Commissioner Mercer asked the applicant to explain the difference between this facility and the numerous other cell sites in Belmont. Mr. Albritton described in detail the variety of sites that are possible, from micro cells to macro cells, depending on the coverage and capacity of the site, and the fewer the radios the fewer antennas, the less coverage and capacity that site will fill. In this case, the applicant is trying to provide

sufficient coverage and capacity to the area between Alameda de las Pulgas and El Camino using two 4' antennas. He explained the differences between this installation and the one on Notre Dame Avenue and in providing coverage for small, dense areas vs. large rural areas. He stated that the more radios, the more channels, and the more simultaneous calls that can be covered.

Commissioner Mercer asked if T-Mobile had looked at commercial sites along the 101 corridor that could be turned to face up the hill. Mr. Albritton responded that it was his understanding that the coverage from this particular site will only reach as far as El Camino Real. Wendelio Buyan, Senior Engineer for T-Mobile, responded that sometimes they have a site shooting up – they can do that – but not for this particular case because Belmont is rolling and the signals do not follow the terrain but shoot straight up. Oracle was mentioned as a possible high rise for an antenna. Mr. Buyan responded that they could probably achieve antenna height difference from the ground but to reach the elevation of the water tank from the elevation of El Camino Real they would probably have to have 100-plus feet of antenna height to be able to duplicate that of the water tank. The church would be a much higher elevation so would require an even higher antenna.

Commissioner Mercer asked if they looked at any alternatives that utilized multiple smaller cells dispersed around the area instead of the one large centralized facility. Mr. Buyan and Mr. Albritton explained the system of "rings" employed by T-Mobile, noting that there is something missing in the dead center of the ring of T-Mobile facilities in Belmont in terms of providing coverage to the east, west and south of that location. He further described "distributed antenna systems" and explained that the 4' antennas mounted on a 44' tank painted to match would have significantly less aesthetic and environmental impacts and concerns to the residents than that of the large number of micro cells that would be required to cover the area that they are trying to fill.

Chair Parsons opened the Public Hearing.

David King, resident of Mezes Avenue, opposed the project. He appreciated that the visual obstruction has been lowered, but questioned why the applicant is pushing the project so hard since he and his neighbors and friends in Sterling Downs have no problem with reception. He stated that the people on Mezes and Lyon Avenues do not want the project and see no real advantage to the City or citizens of Belmont.

Joe Iffla, resident of Mezes Avenue, opposed the project. He felt that property values are tied to perception, and perception of health and community go together and that there is plenty of evidence that cell phone antenna radio frequencies cause health issues. He asked that the Commission read a handout that he had distributed at City Hall that afternoon, noting that it stated that the County of Palm Beach Florida, the State of California and the Country of New Zealand have all prohibited cellular antennas near schools due to safety concerns. There are 3 elementary schools within a 1-mile radius of and 6 children under the age of 10 living within 200' of the proposed site. He believes there is a lot to be learned about the long-term health of radio frequencies, comparing it to what has been learned about second-hand smoke, and that it deserves more attention and an independent assessment. He was not ready to sacrifice his health for Corporate America.

Robert Miller, resident of Mezes Avenue, opposed the project. He had provided a handout that takes exception to two of the Design Review findings and the Zoning Ordinance. He believes that the property under discussion has a maximum allowable footprint of 3500 feet. The existing pump structure and a new building are addressed but it does not take into account the size of the tank, which he feels throws them over the allowed density and requires a separate Variance. He asked that the Commission abide by the rules and not do anything for the applicant that they would not do for any other property owner in Belmont.

Rick Pauli, resident of Lyon Avenue, opposed the project. He referred to the four candidate sites discussed, questioned how they could turn down Candidate B because of interference by the trees, but plan to use the existing trees and plant new ones to cover the tower and the antenna on the proposed site. He wondered if they are going to have to come back in the future and ask to cut down the trees for better coverage.

Cecil Nelson, resident of Lyon Avenue, opposed the project. He believed the site is already over built, questioned how many other companies will want to share the site, and expected noise from the air conditioning and wind passing between the tank and the antennas. He did not feel that T-Mobile had explored all other site possibilities.

Christopher Wright, resident of Lyon Avenue, opposed the project. It was his understanding that the Planning Commission has the right to refuse T-Mobile's application if it feels that the character of the community will be negatively affected. He felt that with this project they are being asked to lower their standards as to the character of Belmont and that it should be their moral impulsion to elevate its character at every turn in every situation.

RS Flores noted that George Kranen had completed a Request to Speak but was not present.

Stanley, resident of Mezes Avenue, opposed the project. He felt that the City's record that shows that only one neighbor had contacted the City to read the file should be corrected, since he for one did not go to the City to read it – he obtained a copy. He expressed concerns about wireless radiation causing brain tumors, especially in teenagers, and quoted from a doctor's 2008 Congressional testimony that stated that long-term and frequent use of cellular phones increases the risk of brain tumors. He was also concerned about the added weight of the antennas to the water tower in the event of an earthquake. He provided copies of the Congressional testimony to which he had referred.

Robert Miller asked to add one comment. He stated that property value is an element that can be used to turn down this type of program, and he believed that CDD de Melo could confirm that.

Susan Wright, resident of Lyon Avenue, spoke in opposition to the project, noting that she was amazed that an FCC regulation keeps the City from objecting to a wireless communication facility based on health concerns, and questioned the methodology of previous research and if anyone is monitoring the health of citizens who live near transmitters compared with a control group who do not. Her own on-line research found reports of cancer clusters surrounding cell phone maps in different communities in the United Kingdom and other European countries, and the U.S. label of "inconclusive" is not good enough for her. She asked that the Planning Commission request current research from a third party not associated with the industry or the FCC that proves that the radiation from wireless facilities is not a health risk, and felt that, until then, they should reject the placing of any new transmitters near homes. She suggested a more proactive community-based process that would seek a location with which everyone could live.

Chair Parsons honored Stanley's request to continue his previous comments. He stated that there is already existing cell coverage, that with the 6 antennas it will no longer be a small structure, and recommended that the Commission consider that the poles should be separated and removed from the densely populated area near schools and apartment complexes.

MOTION: By Commissioner Frautschi, seconded by Vice Chair Horton, to close the Public Hearing. Motion passed 7/0 by a show of hands.

Mr. Albritton addressed the Commission again in order to respond for the record to the public comments:

- Regarding the comment that phones already work in the area, he stated that it is an issue of coverage and capacity. As phones are used more the coverage of the cells shrink, and T-Mobile would not be putting all this time and energy into this facility if they did not feel there is a significant gap that needs to be filled.
- Regarding noise, T-Mobile have provided specs, and there is a condition of approval that if they do not comply with the Belmont code it will have to be brought into compliance.
- There is one cable tray leading up to the roof to the first set of antennas, then the cables run across the top of the tank so will not be visible going from antenna to antenna.
- Commissioner Frautschi asked for clarification of the inconsistency raised by Mr. Pauli regarding coverage due to trees. Mr. Albritton stated that the 8' saplings and the additional landscaping are intended to shield the equipment shelter, not to shield the antennas. The antennas will be 44' in the air and it is line-of-sight technology. There are some trees to the east of the tank but the antennas are intended to shoot over those trees.

Commissioner McKenzie asked for clarification as to why the coverage is different on the packet of maps labeled Candidate A and the one labeled "Proposed Site." Mr. Davis responded for the applicant. He explained that one antenna had been adjusted since the preparation of the "Proposed Site" map last November and the current Candidate A map. The coverage of the Candidate A map is accurate because the direction of one antenna on the existing site has been modified from the northwest to point directly north.

Commissioner Mercer asked for clarification of the City's regulatory options with respect to lot coverage of

the water district's property. CDD de Melo read from Section 9.91 of the Zoning Code, which exempts the water tower structure itself from zoning floor area limits. He added that the T-Mobile facility, with the construction of their equipment shed, complies with the 3500 sq.ft. limit and that any findings associated with single-family design review development standards or requirements do not apply to this particular project.

Commissioner Frautschi asked staff to address floor area limit issues raised by the public:

Referring to the codes mentioned by Mr. Miller, CDD de Melo confirmed that floor area development requirements cannot be considered as part of the past installation of the water tanks for that site. He added that the T-Mobile equipment cabinet shelter is considered a structure that can be regulated based on placement and square footage and there is no limit as to the size of an ancillary structure so long as it does not exceed the 3500 sq.ft. limit, which this does not.

Referring to the question raised by Mr. Nelson regarding air conditioner noise, CDD de Melo stated that the City's Noise Ordinance limits DBA during daytime hours to 65 DBA and 55 in the evening, and that the City is in a reactive mode relative to complaints, so if there are complaints that the air conditioning unit is exceeding noise limits the City will test the equipment with noise meters to confirm that they are exceeding or not exceeding that standard. A condition could be considered that calls for testing at some point.

Regarding related property values and character of community, CDD de Melo stated that the Commission has the opportunity to look at this application and comment, and has discretionary authority relative to design review issues. If the Commission is convinced that this facility will decrease property values in this neighborhood and that decrease makes it impossible to make one of the findings, then they need to ask whether there is any location within the City for which a facility would not affect property values. They can consider it but then they have to look at the spectrum of other potential locations and if they can conclude that there will be a property value issue with other locations as well, then there can be no facility that could be installed that would not create a property value issue, and that prohibition on that kind of an application becomes an issue.

ACA Kane added that the issue is whether there is something unique about the property value impact to this location as to any other potential locations or cell installations. The reality is that the Commission's hands are tied as to certain aspects of this decision by federal law, and though concerns about such issues as health impacts are real and legitimate, they have been explicitly preempted by the federal government in this area. CDD de Melo added that the Commission required the applicant to provide a range of alternative sites and that could factor into the Commission's decision-making about better coverage, but in looking at those other sites they need to ask if the installation of some type of facility would create a property value impact at that location as well.

Expressing her concern about the noise from the air conditioner running at night, Commissioner Mercer asked the applicant if there would be a way to configure the equipment so that it does not require an air conditioner and a rather large structure, noting that they had previously ruled out an open pit because of vandalism temptations. Mr. Albritton responded that it would be possible to use cabinets rather than a shelter, but it was his understanding that there is something in the history of this site that there was a desire to place a shelter there. He added that in the worse case scenario the specs for the air conditioning units are very close to the allowable nighttime decibel reading at the units themselves – not 30' feet away. They will make the highest noise when the temperature is over 85° but will still comply with the noise ordinance. They are not anticipating a noise problem.

Commissioner Reed asked the applicant what the RF exposure is from the actual use of a cell phone up against someone's ear, not from the ambient exposure to a tower.

Bill Hammett, Registered Professional Engineer, responded that the use of a cell phone is a higher power density level at the cell phone than is received from the tower. The standard allows up to 20 times higher exposure levels at that small area, and in the case of the cell phone vs. the tower, where the tower is 50 to 200 times below the standard, the standard allows higher levels for the cell phones and they operate very close to those levels. The differential is hundreds of times stronger from the cell phone than from the tower. Mr. Albritton added that most studies that you hear about deal with the cell phones themselves and not the antennas.

Responding to Commissioner Reed's question as to why San Francisco uses micro cells, Mr. Albritton stated that San Francisco is very dense – 8 of 10 Californians over the age of 12 have a cell phone. Since each cell can handle only so many calls, they have to have many more cells just to handle the capacity of people on the phone in San Francisco. T-Mobile has a permit in San Francisco to put 5' chimney facilities on top of apartment buildings without building permits and those obviously are a lot closer to people than the 30' that we're talking about in the subject case. He added that even then they are still at 5% of the FCC standard. The antennas are all lower power and the closer you are to an antenna the less power your phone has to use in order to reach the antenna, so you reduce the actual exposure to the person who is on the phone by having a nearby facility. He stated that the use of micro cells does not have anything to do with the topography of San Francisco.

Vice Chair Horton commented that they would probably all prefer to be able to comply with a lot of things with which they are not able to comply because the federal government says they must follow certain rules, and as much as she sympathized and understood what the neighbors were saying, she did not think the Commission could do anything but approve the project. She believed that T-Mobile and the Commission had all done their homework and the decision is that it goes at the water tower site.

Commissioner Mayer echoed Vice Chair Horton's sentiments, and felt that they had come a long way since the first application. The Variance has been eliminated, the unsightliness of the design has been mitigated by the lowering of the antenna, and he was mystified by the fact in any given neighborhood there is such an objection raised to this type of installation by people who presumably use cell phones. By federal law the Commission is not allowed to take health concerns into consideration so long as the potential health effects of this installation are below the allowed limits. He felt that everything has been done that could be done to mitigate this process and thought he could make the findings.

Commissioner Frautschi thanked the applicant for the materials they provided, and thanked everyone who spoke about the project. The project to him boiled down to the character of the community, and he agreed with Susan Wright and urged her to contact the FCC. He was not convinced that all possible sites were considered, and suggested, for example, a site on Davey Glen. He quoted from a memo received from the City Attorney and Section 11.5.1, finding d) and determined that the Commission could ask for more sites. He believed the applicant looked at the sites in good faith but was willing to vote for a continuance to look for more sites. He mentioned that three houses just recently sold very quickly on Lyon Avenue because people wanted to move before this decision was made. Unless other Planning Commissioners want to look for alternate sites, he could support the findings with the additional conditions that were offered by one of the Commissioners about prohibiting exterior lighting facilities and provide additional landscaping on the west side of the property.

Commissioner McKenzie mentioned that this is the fourth time they have seen this project and felt that the applicant had addressed the issues and had responded to the requests of the Commission and to the neighbors. Of all the possibilities he could think of this one worked for him. He was sympathetic to the neighbors but could not find an objection that would stand up to the federal laws that are held up in this case. He could make all the findings and could support the project.

Commissioner Reed understood the people who do not want this in their neighborhood but wanted them to know that this Commission is to a large degree handcuffed by law. That is the advice they are given by the City Attorney. He was a little frustrated at T-Mobile's efforts to generate coverage maps that are not consistent and also wondered if the smaller pole-mounted microcells might be a better less-intrusive way to serve the City but was also aware that anybody living near one of those poles would have the same reaction to a cell antenna. He did not want to make all the findings but he could.

Commissioner Mercer was unable to find any alternative to this plan. The micro cells would be a proliferation of those unsightly poles requiring multiple sites, multiple applications, and multiple neighborhoods impacted. She could not in good faith fail any of the findings and believed it would be a stretch to say that this is inconsistent with the community character because there are numerous cell sites around, including another water tower that has four different installations on it and is just as localized to residents as this one. She believed this is a far more aesthetically pleasing installation than some of the others that are around town and that the applicant has done their best to lower the heights, redesign the shed, and comply with every other condition that they could think of to make it as acceptable as possible. Given the existing federal regulations, she could not find any basis on which to deny the project but encouraged residents to

continue doing their research and to take the subject up with the newly formed federal government. She stated that unfortunately she could make all the findings.

Chair Parsons thanked everybody for coming and speaking and expressed his personal feelings about how it hurts whenever a cell site comes up and he can't do anything to prevent it because of federal law. He believed the Commission did all they could to minimize the visual impacts, and suggested that they can add some more conditions to make the landscaping stronger and the character of the building better. He could not find a reason not to vote for the project.

MOTION: By Vice Chair Horton, seconded by Commissioner McKenzie, adopting a Resolution approving the Conditional Use and Design Review at 1906 Lyon Avenue (Appl. No. PA2007-0006) with the added conditions that: 1) there will be no permitted lighting; 2) additional landscaping on the West Side of the property; 3) a requirement to take a noise reading at the equipment shed within 1 year's time; and 4) the landscape plan will be brought back to the Commission with more detail of materials, how the structure will be finished, and a description of the railing around the top of the retaining wall if it is required.

Ayes: Horton, McKenzie, Mercer, Mayer, Parsons, Reed
Noes: Frautschi

Motion passed: 6/1

Chair Parsons called for a 5-minute recess.

5B. PUBLIC HEARING – 1400 & 1404 El Camino Real (Continued From May 6, 2008)

To consider a Conditional Use Permit & Variance to allow musical entertainment and use of an adjacent outdoor patio area for an existing commercial restaurant. The project includes new outdoor seating and landscaping for the proposed patio area. (Appl. No. 2008-0020)

APN: 045-248-010 & 020; Zoned: C-3 (Highway Commercial)

CEQA Status: Recommended Categorical Exemption per Section 15303

Applicant/Owner: Golar Mokhtari

Project Planner: Carlos de Melo, (650) 595-7440

CDD de Melo summarized the Staff Report, as well as amended Conditions of Approval and Resolution for the Conditional Use Permit that had been placed on the dais. Staff believes that all findings can be made for all three entitlements – the outdoor patio, live musical entertainment and the parking Variance.

Golar Mokhtari, applicant/owner, pointed out that the restaurant is customer-driven and that musical entertainment and outdoor seating have been requested by their customers. With respect to music, they have no intention of having live music every day but would like to have entertainment capability on an occasional weekend basis, particularly for private parties.

Commissioner Frautschi asked the applicant why there had been no changes to the landscape plan as had been requested by the Commission at the last meeting. Ms. Mokhtari responded that they have spent four years and a lot of money on this project and are now trying to establish business at a bad time in the economic conditions. There are many costs involved they have no intention or means of spending additional money on landscaping that they do not think is necessary to beautify the location. She responded that they are using their own land for the outdoor seating, not making any structural changes and they have no means of spending additional costs to make the landscape changes.

Commissioner Frautschi asked about the condition stating that the applicant shall submit \$1,592 to the City of Belmont no later than June 30th for outstanding permit fees associated with the requested entitlements. CDD de Melo stated it is an outstanding balance that staff would like to see addressed.

Chair Parsons opened the Public Hearing. No one came forward to speak.

MOTION: By Commissioner Frautschi, seconded by Commissioner Mayer, to close the Public Hearing. Motion passed 7/0 by a show of hands.

Commissioner Mercer felt that there is a lot of community support for the project and believed it will work. She supported the way staff had structured the conditions specific to the individual properties. She felt that since 1404 El Camino Real will have its own CUP it should be looked at as an auxiliary business, and that the fence is the public face of the business and needs to comply with at least the spirit of the façade standards of the Downtown Specific Plan. Every other business is required to have some sort of landscaping to soften it against the street frontage and she believed they need to require that for this project. She would like to see the fence moved back 2' with a hedge the full length, or if that's too costly they could easily set a couple of 8' sections back 2' where they are proposing gates. The parking was acceptable to her and she thanked staff for the parking analysis. She hoped they will soon see the entire downtown surveyed, that this is something that becomes part of every application for a parking variance in the downtown area, and that all the businesses in the block will be combined into one big picture.

CDD de Melo added kudos to SP DiDonato for getting the parking survey started.

"Commissioner Reed noted that the GDP shrank 3.8% in the fourth quarter of 2008, that the state's unemployment figure is nearing 10% and that California is now about to issue IOUs instead of checks. Given this background, he stated that he had no problems with the patio area or the required parking. Additionally, he supported the cabaret use and suggested hours of operation similar to those of Shalazaar. He commended the restaurant operators for doing a great job on the recent remodel and hoped that other businesses along El Camino Real would consider doing something similar."

Commissioner McKenzie extended encouragement to the applicant, was impressed with the atmosphere of the restaurant and expected that they would do the same with the outdoor patio. He strongly suggested that the fence would do a lot for the atmosphere and make the patio much more inviting from the streetscape. He was also sympathetic to the economic situation was confident that the applicant will do the right thing in the patio and will make good use of planter boxes and other touches that they have already put into the restaurant.

Commissioner Frautschi commented as follows:

- He requested that the Landscape Plan be continued. He quoted from the City's policy and guidelines: "Landscaping within the general commercial district shall enhance the pedestrian orientation of the downtown. Planted areas and street trees shall be located adjacent to or within the pedestrian walkway and corridors." "A range of between 10% and 15% of the gross site area should be planted and landscaped. The 15% landscaping requirement should be encouraged." He did not see 10-15% landscape. He stated that he is sensitive to the cost of things, however, as Planning Commissioners they cannot consider the cost – that is the applicant's responsibility and the cost of doing business. He reiterated that he believes the landscape plan needs to follow the rules that they follow with every single project, and that there cannot be a grant of special privilege.
- He supported the Variance for parking. The problem to him was Finding 10 which states that the CUP for 1404 becomes null and void should the existing restaurant at 1400 be conferred to any other permitted or conditional use, but there is no mention of what happens to the parking Variance for 1404. He reminded that on May 6th the City Attorney confirmed that if the patio area and the little house were sold the CUP and Variance rights would go with the property.
- He supported the cabaret, but questioned if there would be speakers from the restaurant out to the patio and pointed out that this is the first cabaret license they have issued that has outdoor patio space and that a residential neighborhood is very close.
- Regarding Condition 7, he suggesting adding that the Conditions of Approval be posted such that they are "visible to all restaurant personnel and patrons" because it would help the owners if patrons became unruly.
- Regarding the new Condition 10 on page 2, he would add at the end of it that it should include the parking Variance at 1404.
- Regarding Condition 6 on page 3, he would add the words "or tent structures" to avoid the building of tent structures over the whole area in order to have covered seating.

Commissioner Mayer commented that he originally severely criticized the fence but in view of the current economic situation he was torn between granting some sort of special privilege regarding landscaping and encouraging the business. He asked staff is it would be possible to postpone a landscape plan over a period of time. CDD de Melo responded that he was not concerned that the enactment could be fulfilled at a specified time after the patio use is established. If the Condition were not fulfilled based upon that time, that could serve as grounds for review of the CUP and parking Variance for compliance and would become a code enforcement issue. Commissioner Mayer felt that the applicant had turned the inside of the restaurant

into something with class and atmosphere and was very much in favor of the project. He could make the findings for the parking Variance and the patio use and was very much in support of the cabaret.

Vice Chair Horton supported the project. She believed that there may need to be some adjustments to the fence for ADA accessibility and exiting requirements; the gate has to swing out and cannot swing into the public right-of-way. This requirement might provide an opportunity to do some landscaping like a tree in a pot or something. She saw it as a paved patio area so that the proposed planting is appropriate and thought it would be nice to have something at the fence that carried the look of the restaurant over to the patio rather than making look like it was a separate lot. She agreed that that could be done with vines and adjustment of the gate. She had no problem with the parking Variance or the cabaret license, and suggested mimicking something like Hola's, starting no earlier than 10:00 or 11:00 a.m. She suggested that since the restaurant does a nice business on Sunday as a result of the Farmer's Market it might be nice to offer brunch and would support that.

Chair Parsons liked the idea of having a cabaret license and liked what the building looks like inside, but was disappointed with the applicant's responses relative to the landscaping. He felt that the landscaping in the front has never been what it should be to augment the restaurant. He pointed out that the City is spending a lot of time and money trying to bring in new business by beautifying El Camino and the neighborhoods, and has a landscaping requirement in the Downtown Plan of 10 to 15%. He could not make that finding unless the applicant can agree that there will be a landscape plan that pushes the fence back and that there are some shrubs and greenery along the street. He suggested that the gate and landscaping could make an attractive entrance to the restaurant. He could support the project if there is a condition that requires that they accommodate the landscaping on the street side of the fence.

Commissioner McKenzie asked if the project would qualify for the façade improvement incentive program. CDD de Melo responded that it absolutely would qualify and staff could work with the applicant to obtain that benefit.

Ms. Mokhtari stated that they had discussed the façade program and decided against it because of all the written requirements. In addition, she stated that they have fully paved 1404 and are not about to cut and go back 3' and go through all the work and all the expense to move the fence back. She asked that the Commission have faith in them and encourage them by not creating any more conditions or roadblocks. They will adhere to the ADA requirement but to cut the pavers, move the fence and put in landscaping would cost quite a bit of money and reduce the seating space and they are not willing or ready to do that. She added that they need to focus on growing their business.

Vice Chair Horton questioned how they could have a rule that is different for the applicant than for everyone else. Ms. Mokhtari responded that she did not see why there are three parcels that are part of the Downtown Plan from the entire block and stressed that they are not doing anything to the structure of the building or the lot – they want to use it as a patio just like a sidewalk permit. She had not understood that people are required to landscape a sidewalk in order to obtain a sidewalk dining permit. Vice Chair Horton recommended that the Commission put a time limit on the landscaping and give them a break right now, but that to not require the landscaping would be setting a terrible precedent.

Chair Parsons pointed out that when the issue of possible future use of the patio was discussed at a previous meeting the applicant was told that she would have to apply for a permit. Instead she went ahead and did the work and spent money without permits from the City. He added that he wants the business to succeed but that the Commission cannot set a precedent where businesses can do exactly what they want when there are rules and regulations that are set in place by the City Council and the Commission's job is to see that those rules are obeyed. He told the applicant that she has a choice of not operating the patio or following the rules.

Commissioner Mercer asked staff to explain how to interpret the 10% landscaping requirement for a building like Caprino's where the building occupies 100% of the site. CDD de Melo replied that it is an impossibility for that building because the building takes up the entire project site. It becomes a function of opportunity based upon available land. The subject property is different in that there is land available for landscaping. He added that staff is willing to entertain a time period to allow this to occur and he would continue to explore the issue related to façade improvement rebates for the applicant and endeavor to streamline the process for her.

Ms. Mokhtari added that space is already limited for seating on the patio and could not see why they could not beautify the patio with vines, trees, shrubs, etc.

At Vice Chair Horton's request, the Commission was polled as to their wishes with regard to requiring landscaping behind the fence and/or having the fence moved, and discussion ensued regarding the issue. Responding to the question of whether or not portable planters count as a percentage of landscaping, CDD de Melo stated that the code does not prohibit the use of portable planters to satisfy the aggregate 10% , which would be approximately 225 sq.ft. of planters within the interior of the courtyard. He added that if this were a brand new building, the 10% would most likely be required to be permanent in-ground landscaping, but they could allow latitude because it is an existing site.

CDD de Melo restated that amendments, as he understood them, as follows:

- Amend Condition 10 to add that "Should the existing restaurant at 1400 El Camino Real be converted to any other permitted or conditioned use, this Conditional Use Permit and parking variance for 1404 El Camino Real shall become null and void."
- Add "and patrons" to Condition 7.
- Strike Condition 2 under the Building Division.
- Strike Condition 5 under the Building Division in order to allow access to the patio from the sidewalk, pending building code conformance.
- Modify Condition 6 to read "No awnings or tent structures shall be installed attached to or adjacent to the restaurant building in the patio area."

Commissioner Mayer asked for a clarification of the landscaping question and confirmed that a landscaping plan that specifies what plants will be used in each of the planters will be required to be completed by a date certain.

MOTION: By Commissioner Mayer, seconded by Vice Chair Horton, to adopt the Resolution approving a Variance and Conditional Use Permit at 1400 and 1404 El Camino Real (Appl. No. PA2008-0020) with the aforementioned conditions that have been corrected in the Conditions of Approval, plus the provision for a landscape plan outlining the use of planters and the types of plantings, including the inside and outside of the patio, to be submitted to City staff by June 30, 2009, such landscape plan to be before the Commission for review no later than July 31, 2009. The applicant may operate in the meantime, but if the landscape plan is not received by June 30, the right to use the patio will be rescinded.

Ayes: Mayer, Horton, Mercer, McKenzie, Frautschi, Reed, Parsons
Noes: None

Motion passed 7/0

Chair Parsons announced that this item can be appealed to City Council within 10 calendar days.

Regarding the cabaret permit, Commissioners confirmed that they would like to see a resolution that would allow live entertainment Fridays and Saturdays from 11 a.m. to 11 p.m., 10 floating days per year Sunday through Thursday from 11 a.m. to 11 p.m. plus Sundays from 11 a.m. to 2 p.m. CDD de Melo agreed to bring that Resolution to the Commission as a consent item at its February 17th meeting.

6. NEW BUSINESS

6A. PRELIMINARY DESIGN REVIEW – Vacant Lot adjacent to 1114 Village Drive
Preliminary Design Review for the construction of ten new condominiums. (Appl. No. 2008-0061)
Lot 10, Block of Carlmont Village Subdivision No. 1; Zoned: R-4 (Multi-family Residential)
CEQA Status: N/A
Applicant: Frank Gonsalves
Owner: Belmont Lot, LLC
Project Planner: Damon DiDonato, (650) 637-2908

SP DiDonato summarized the staff memorandum, and asked that Commissioners' comments, if any, be directed at the four issues raised in the memorandum.

Responding to Commissioner Frautschi's question regarding the subdivision of the site, SP DiDonato stated that, according to the submitted title report and after consultation with the City Attorney's office, this is a completely independent site that would be further subdivided for the condominium purposes, and that a subdivision map would be submitted if the project goes forward.

SP DiDonato clarified for Commissioner Reed that the proposal is in fact to remove a swimming pool and construct ten condominiums on the site between two existing apartment buildings, and that the density would increase in the area.

Responding to comments made in the staff memorandum and questions from the Commission, Frank Gonsalves, applicant/architect, made the following points:

- 6 protected trees and 4 unprotected trees will be removed and the remaining 29 trees will be protected as assured by a certified tree arborist.
- Regarding grading hardscape, he estimated that there will be 1240 cubic yards of cut, of which quite a bit of that will be for fill, and stated that final grading and drainage plan will be provided at future hearings.
- Referring to page 7 item 2 regarding non-conforming open space dimension, he wanted Commissioners to be aware that for the 2nd floor open space requirement the actual open space will far exceed the requirement. The square footage of open space is about 9000+ square feet and 1500 sq.ft. is the requirement, so that so there would be about six times more open space than required for this project.
- A local trash hauler will be consulted regarding the size of the trash room.
- A laundry room will be added.
- In-stall parking spaces will be provided.
- About half of the units will be two-bedroom units and will have washer and dryer in the units. The one-bedroom units will be too small for a washer and dryer.
- The parking structure will be 4' below grade level with the town homes above that; about 4' above grade level. The cut will be used to fill the swimming pool and terraced area that surrounds the pool.
- Regarding density question, there is one apartment house that is two stories above and 17' removed from the planned development. The other apartment house is so far removed it is of very little significance regarding concerns about shadows, etc.

Dr. Chavez, owner of the property, clarified that the driveway will go 4' up from the sidewalk. He explained the thought process that went into the plan, and noted that the density is less than the adjacent properties. A common area is planned for a large open landscaped area in the back of the property. He was looking for ideas from the Commissioners that might make the project better.

Commissioners commented as follows, referring to the 4 questions posed in the staff memorandum regarding the proposed site: 1) Is the land use appropriate? 2) Is the intensity appropriate? 3) Is the arrangement and distribution of land appropriate? 4) Is the architecture compatible with the site and surrounding area?

Commissioner Frautschi:

1. Yes
 2. No, because the structure seems too dense and would benefit by reducing the number of units. Too much hardscape and, depending on the final numbers, there is a lot of grading.
 3. Response to item 2 applies.
 4. The architecture looks 1970's – is kind of "pedestrian" looking to him and seems to crowd the surrounding structures. The project across the street in the 2100 block of Carlmont recently went through this process. The lot was 10,421 sq.ft., this lot is 15,731 sq.ft. Using the criteria used for that project, he felt that this project should have no more than 4-5 units.
- Additionally, anything that comes to the Commission would have to have complete landscape and grading plans, and to make them sellable laundry facilities should be in the units.

Commissioner Mayer:

1. Yes
2. Believed that the City would allow a much greater intensity if these were apartments. Given the fact that they are condominiums, he thought they have a desirable reduced intensity from that perspective but it would be nice if they could reduce it further to provide for better living units and it would better echo the development across the street.
3. OK
4. Not very happy with the architecture. One of his pet peeves is making architecture compatible with the

neighborhood; if the neighborhood has ghastly buildings you don't want it to be compatible—you want it to be somehow more imaginative and different. The condos that are going up across the street could perhaps be echoed a little more in this design.

Vice Chair Horton:

1. Yes
 2. It probably is; it's sandwiched between other giant buildings. The plan resembles more of an apartment than a condominium, so the applicant will have to make a decision as to whether he wants to have small units that are more apartment-like or more condominium-like, in which case she would reduce the intensity of the use.
 3. Too much hardscape in the courtyard through the middle. Since there are no patios, that area could be made more inviting.
 4. It would be nice if it was not compatible with the neighborhood and was a departure from the surrounding area. Will blend in too much with the apartments that are already there and not sure that is what you want if it is a condominium project.
- In addition, she believed an elevator or a lift will be required to get people from the garage up to the front doors of these units.

Chair Parsons:

1. Housing is zoned for this area. Thinks that an apartment would be better than a condo because it is such a tight site. He personally would never buy a condo in the middle of all the apartments.
2. Too intense as a condo development. Lesser land use intensity would be better.
3. Had concerns about land use. There is a massive retaining wall on the east side that will be a major issue, and the patios are coming to the retaining wall. He had trouble visualizing since the proposal did not have contours and the existing conditions are at a different scale. He suggested that when they come back they bring a model so the Commission can understand how the parking garage and the buildings will sit on the site and how it will be treated on the edges of the property.
4. Too soon with just a façade to tell how the architecture of the overall complex will look.

His biggest concern is how the property will be arranged, especially on the eastern side and on the western side where it will abut other properties. That is where the neighbors will have a concern, especially since there is already a retaining wall on one side.

Commissioner Mercer:

1. Yes.
 2. Likes the concept of it being condominium property. Thinks there needs to be more entry-level units that would appeal to young urbanites.
 3. Too many units squeezed in because they have sacrificed laundry. Because of the configuration, the open spaces are cut up into little unusable common spaces in the middle and too small and too shaded to be usable on the outside. Wondered if there is some configuration that could give each unit a single larger private space that would then maybe have more sun. The scale in total is fine – if it got any smaller it might look silly sitting there.
 4. The contemporary look is more appropriate for the young buyers. She thought it would look funny to stick a traditional craftsman in the middle of the contemporaries – it needs to blend.
- She was also concerned about the number of car trips that will be added to the very busy street.

Commissioner Reed:

1. Yes
2. He wouldn't buy something so crowded but if he were younger, fresh out of college, first job, maybe. It depends on who your target audience is.
3. No comment
4. I saw the architecture façade and I thought of Mariner's Island Foster City about 1975. Something more modern, more upscale looking, even if you're marketing to entry-level folks, would certainly benefit this project.

Commissioner McKenzie:

1. Yes
2. Overcrowded for condominium. Suggested that a total of 6 would fit in the space.
3. The site is more appropriate for apartments than for condos. As condos, would they fit into the definition of low-income properties that would meet the target for the City? Everything is squeezed together. The courtyard is supposed to be an amenity but he thought it would look like a canyon in between these two

rows of buildings. Not a good arrangement for a condominium project – they need laundry and storage facilities.

4. Thinks it looks like 1975 vintage and not what he would like to see sprouting up in that area of the City.

6B. PRIORITY CALENDAR STEP II – SPRING 2009

Because of the lateness of the hour, it was suggested by the Chair and Community Development Director that this item could be postponed until the February 17th meeting.

MOTION: By Chair Parsons, seconded by Commissioner Reed, to move the Priority Calendar Step II to the next regularly scheduled Planning Commission meeting.

Ayes: Parsons, Reed, Horton, Frautschi, McKenzie, Mayer, Mercer

Noes: None

Motion passed 7/0

7. REPORTS, STUDIES AND UPDATES:
CDD de Melo reported as follows:

7A. Motel 6 – 1101 Shoreway Road
No report due to lateness of the hour.

7B. NDNU (Koret) Athletic Field
No report due to lateness of the hour.

7C. Charles Armstrong School – 1405 Solana Drive
Had a productive meeting the previous week.

7D. Ralston/US-101 Landscape Project
No report due to lateness of the hour.

7E. San Mateo Development – North Road/43rd Avenue
He and Chair Parsons are trying to coordinate their schedules to go to San Mateo to review their files. I know there are continual questions about the property and staff is trying to monitor it daily.

7F. 900 Sixth Avenue – Belmont Vista Facility
No report due to lateness of the hour.

7G. Caltrain Landscape Area
No report due to lateness of the hour.

7H. Vancea Auto – 900 El Camino Real
No report due to lateness of the hour.

7I. Parking Study – Downtown Village Areas
The underpinnings of the parking study were presented with Item 5B. When the perimeter of the parking study area is defined the end result will be a map of some sort with tabulations of available parking.

Other Items

Commissioner Reed asked that future Staff Reports include aerial photographs of the property in question. CDD de Melo concurred that the City has GIS capability and could include it in packets for development applications.

Commissioner Frautschi asked that the graffiti on the rear of five businesses on Old County Road as viewed from O'Neill Street be abated. It is his understanding that the businesses could get reimbursed by the City for this effort.

CDD de Melo stated that the Commission will be provided with copies of the HIA Handbooks that were prepared by the City in 2007.

Commissioners McKenzie and Reed announced that they will be absent for the February 17th meeting.

8. CITY COUNCIL MEETING OF TUESDAY, JANUARY 27, 2009

Liaison: Chair Parsons

Alternate Liaison: Commissioner Mayer

9. ADJOURNMENT:

The meeting was adjourned at 11:13 p.m. to a Regular Planning Commission Meeting on Tuesday, February 17, 2009 at 7:00 p.m. in Belmont City Hall.

Carlos de Melo
Planning Commission Secretary

CD's of Planning Commission Meetings are available in the
Community Development Department.
Please call (650) 595-7416 to schedule an appointment.

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